

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ORIGINAL

UNITED STATES OF AMERICA,

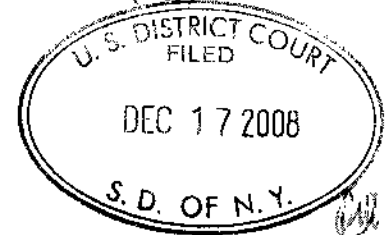
Plaintiff,

vs.

FREDDY FERMIN, et al.,

Defendant.

Case# 91Cr. 634-02(VM)



PRO SE OFFICE

NOTICE OF APPEAL

Comes Now, **FREDDY FERMIN** hereinafter Defendant this 12 day of December 2008, pursuant to Federal Rules of Appellate procedure 4(b), to appeal the denial of his 18 U.S.C. 3582(c)(2) files in accordance to Amendment 706, and further states to wit:

1. On or about June 26, 2008, Defendant filed his initial §3582(c)(2) pursuant to Amendment 706 within this said Court, whereas the same was both Traversed by the Government and denied on July 25, 2008 via Order of Judge Victor Marrero.
2. On or about August 11, 2008, Defendant filed a **Motion for Reconsideration** of his §3582(c)(2), whereas the same was both Traversed by the Government and denied on November 13, 2008 via Order of Judge Victor Marrero.
3. Notice is hereby given that the Defendant Freddy Fermin,

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in the above criminal matter, hereby appeals the Final Judgement denial of his §3582(c)(2) from the Southern District Court of New York: Final Order on denial dated November 13, 2008; stamped filed November 14, 2008; but received by Defendant on December 9, 2008.

4. Defendant Fermin verifies his late reception of the Court's Order of denial by:

(a) Exhibit "A" - Copy of the Envelope with its mail out date stamped December 03, 2008.

(b) Exhibit "B" - Copy of the last page of the Order, noted and signed by Defendant's Unit Manager, Mr. Whritenour, (sic) that the Order received by Inmate Fermin #30556-054 at F.C.I. Fort Dix - was on December 09, 2008.

5. Defendant Fermin was not apprised via Order of denial of his §3582(c)(2) until December 9, 2008, subsequently, the late reception of the Court's November 13, 2008 Order was no fault of Defendant; rather it was that of the Clerk of the Court.

6. Defendant now acts in good faith; and according to the standards of excusable neglect as held in, Fallen v. U.S., 378 U.S. 139, 143-44(1964), invokes the tolling of the time from the signing of the Order on November 13, 2008, until the reception of the order into Defendant's possession on December 09, 2008.

7. Defendant request to submit a memorandum of law in support of his §3582(c)(2) pursuant to Amendment 706 before the Appeals

Court, and humbly awaits a briefing schedule.

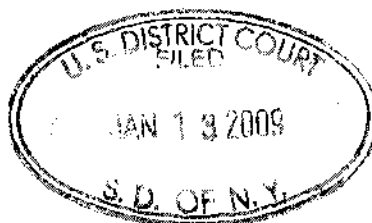
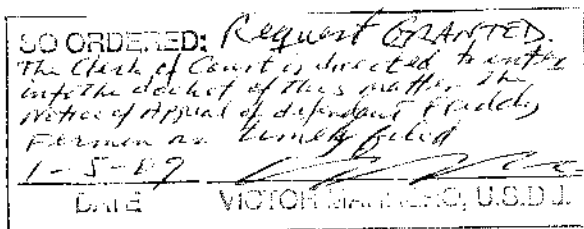
WHEREFORE, for the above stated reasons, Defendant Fermin moves this Court to accept as timely his Notice of Appeal and forward the same with Court records to the Second Circuit Court of Appeals.

Respectfully submitted,



Freddy Fermin
Fed. Reg. No. 30556-054
F.C.I. Fort Dix
P.O. Box 2000
Fort Dix, New Jersey 08640

Dated: December 12, 2008
Fort Dix, New Jersey

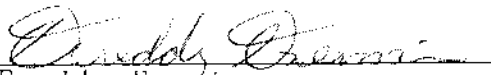


CERTIFICATE OF SERVICE

I, **FREDDY FERMIN**, hereby certify that a true and correct copy of this **Notice of Appeal** has been forwarded by U.S. mail, postage pre-paid this 12 day of December 2008, and sent to:

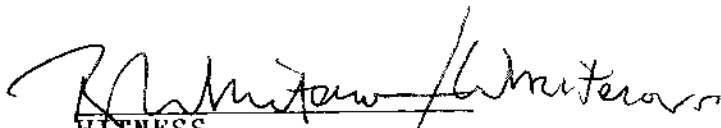
A.U.S.A.
Antonia M. Apps
One St. Andrew's Plaza
New York, New York 10007-1703

Respectfully submitted,


Freddy Fermin
Fed. Reg. No. 30556-054
F.C.I. Fort Dix
P.O. Box 2000
Fort Dix, New Jersey 08640

MAILBOX RULE

Defendant **FERMIN**, invokes the "Mailbox Rule" pursuant to Houston v. Lack, 487 U.S. 266: and states that he has timely mailed this Notice of Appeal by placing it into Prison officials custody.

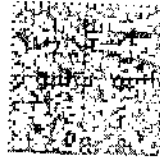

WITNESS
UNIT 6 Msr
FBI FTDIX NJ


FREDDY FERMIN

CLERK
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
U.S. COURTHOUSE - 500 PEARL STREET
NEW YORK, NY 10007

OFFICIAL BUSINESS

NO OFFICIAL MAIL
PENALTY FOR
PRIVATE USE \$300



SPECIAL MAIL - OPEN ONLY
IN PRESENCE OF INMATE

\$

Freddy Fermin
30556-054
FCT Fort Dix
P.O. Box 2000
Fort Dix, NJ 06840

SPECIAL MAIL - OPEN ONLY
IN PRESENCE OF INMATE



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EXHIBIT - A

drug enterprise. There is no indication on the record that Judge Freeh or Judge Mukasey factored the crack cocaine amounts into their determinations of the cocaine quantity used to sentence Fermin, a sentence that was upheld by the Second Circuit. Fermin's mere speculation is not sufficient to warrant a reconsideration of the Court's order denying resentencing.

III. ORDER

For the reasons stated above, it is hereby
ORDERED that the motion of defendant Freddy Fermin for reconsideration of the Court's order denying resentencing (Docket No.407) is DENIED.

SO ORDERED:

Dated: New York, New York
13 November 2008


VICTOR MARRERO
U.S.D.J.

Order Received By I/m Fermin
30556-054
at FCI FT Dix - on 12/7/08

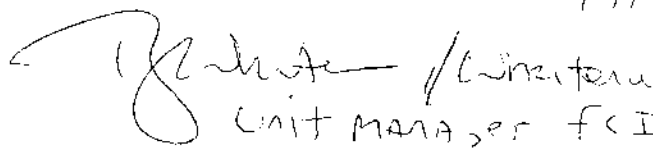

Unit Manager FCI FT Dix
R.V.J.
0840

EXHIBIT-B